

REMARKS

In the Final Action dated February 21, 2003, Claims 1, 3-11 and 13-28 are pending and under consideration. The application has been objected to as the Abstract submitted was not on a separate page. Claim 13 has been rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. Claims 1, 3-11 and 13-28 have been rejected under 35 U.S.C. 103(a) as allegedly unpatentable over U.S. Patent No. 5,391,388 to Lewis et al. ("Lewis et al.").

This Response addresses each of the Examiner's rejections and objections. Favorable consideration of all pending claims is therefore respectfully requested.

The application has been objected to as the Abstract submitted was not on a separate page. Applicants herewith submit the Abstract on a separate sheet. Accordingly, the objection is obviated and withdrawal thereof is respectfully requested.

Claim 13 has been rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. Specifically, the Examiner contends that Claim 13 depends on a cancelled claim. In response, Applicants have amended Claim 13 to depend on any one of Claims 26-28. Claim 13, as amended, is therefore definite. Accordingly, the rejection of Claim 13 under 35 U.S.C. § 112, second paragraph, is overcome and withdrawal thereof is respectfully requested.

Claims 1, 3-11 and 13-28 have been rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Lewis et al. Specifically, the Examiner alleges that Applicants have not shown that the degree of gelatinization correlates with the ability to form a biscuit. The Examiner indicates that Lewis et al. disclose that other related food products, such as a granola bar or a confectionery, can be prepared. The Examiner thus concludes that it is

obvious that the flakes can be made to adhere to each other if a confectionery or granola bar is made. The Examiner further alleges that the claims do not recite the parameters of the claimed invention such as the degree of gelatinization, cooking temperature and cooking time. Therefore, the Examiner concludes that it would have been obvious to one skilled in the art to use flakes of Lewis et al. to form other cereal products to obtain the benefit provided by the waxy grain.

In the first instance, Applicants have amended Claims 1 and 26-28. Claim 23, amended in the preceding response, has been canceled for duplicate claim numbering with Claim 23 in the original claims. Claim 29-33 has been added. Claim 29 incorporates the subject matter of Claim 23 as amended in the preceding response. Support for the amendments can be found throughout the specification, on page 7, line 4 to page 8, line 9 and original Claims 2 and 12, for example. Now new matter has been added.

Applicants observe that the low level (no more than 30%) of gelatinization of the cereal food product from Lewis et al. allows for subsequent rolling and drying in order to produce integral flakes, granulates or flakes in subdivided form. *See* Claim 4 of Lewis et al. Such flakes remain separate and are not agglomerated. In contrast, the BCB product in the present invention employs at least 20% waxy grains, which are hydrated to a higher moisture content and cooked for a longer time at higher temperature, so that almost 100% of the starch content in the grain for shaping BCB is gelatinized. The BCB product is formed from the sticky, fully gelatinized grains.

Claim 1, as amended, recites a breakfast cereal biscuit comprising waxy grain in an amount of at least 20% by weight of total grain content and substantially all of the starch content in the waxy grain is gelatinized. Applicants respectfully submit that the

present invention and Lewis et al. teach totally different products. Applicants also submit that there is no teaching or suggestion in Lewis et al. that a granola bar or a confectionary is made by adhering flakes through gelatinizing the flakes. Lewis et al. merely mention that other breakfast cereal food related products, such as granola bars and confectionary, can be prepared, taking advantage of the invention of Lewis et al. *See* Lewis et al. col. 3, ¶ 2.

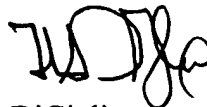
In addition, Applicants submit that Lewis et al. disclose a process totally different from the BCB making process of the present invention. There is no teaching or suggestion in Lewis et al. that the flakes prepared therein would adhere to each other. In this regard, Applicants have amended Claims 26-28 to recite parameters of the claimed methods, as suggested by the Examiner.

Applicants further submit that the rejection of claimed subject matter under 35 U.S.C. §103 requires that the suggestion to carry out the claimed invention must be found in the prior art, not in Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 492, 20 U.S.P.Q. 1438, 1442 (Fed. Cir. 1991). Here, the BCB product of the present invention and suggestion to use the claimed methods to make the claimed BCB product appears nowhere in Lewis et al. Therefore, Applicants respectfully submit that the BCB products and the processes for making such products, as instantly claimed, are not obvious in light of Lewis et al.

Thus, applicants submit that the rejection of Claims 1, 3-11 and 13-28 under 35 U.S.C. 103(a) is overcome. Withdrawal of the rejection is respectfully requested.

In view of the foregoing amendments and remarks, it is firmly believed that the present application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'F. DiGiglio', with a stylized flourish at the end.

Frank S. DiGiglio
Registration No. 31,346

SCULLY, SCOTT, MURPHY & PRESSER
400 Garden City Plaza
Garden City, New York 11530
(516) 742-4343

FSD/ZY:ab

Enclosure: Abstract